

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 3616 of 2006(E)

PETITIONER:

M.MUHAMMED ASHRAF,
HEADMASTER, A.U.P.SCHOOL, VAZHIKKADAVU,
NILAMBUR, MALAPPURAM DISTRICT.

BY ADV. SRI.V.RAJENDRAN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
2. THE ASSISTANT EDUCATIONAL OFFICER,
NILAMBUR.
3. THE MANAGER, A.U.P.SCHOOL,
VAZNIKKADAVU, NILAMBUR, MALAPPURAM DISTRICT.
4. M.GEEVARGHESE, U.P.S.A., A.U.P.SCHOOL,
VAZHIKKADAVU, NILAMBUR, MALAPPURAM DISTRICT.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER
GOVERNMENT PLEADER SMT.M.R.SREELATHA
SRI.P.SAMSUDIN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10/10/2006, THE COURT ON 22/06/2007 DELIVERED THE
FOLLOWING:

APPENDIX

EXT.P1: TRUE COPY OF APPOINTMENT ORDER DT. 26/8/04 OF R2.

EXT.P2: TRUE COPY OF ORDER DT. 26/8/04 OF R2.

EXT.P3: TRUE COPY OF ORDER DT. 12/10/04 OF R2.

EXT.P4: TRUE COPY OF ORDER DT. 17/1/2006.

A.K. Basheer, J.

W.P(C) No. 3616 of 2006-E

Dated this the 22nd day of June, 2007.

J U D G M E N T

An interesting question touching upon the interpretation of Rule 45 in Chapter XIV-A K.E.R. has come up for consideration in this writ petition.

2. The question is : Can a graduate teacher in an Upper Primary School claim promotion to the post of Headmaster if he has got half of the period of service of the seniormost undergraduate “claimant”? In other words, the question is whether it is the total length of service of the seniormost undergraduate teacher in the school that has to be reckoned for the purpose of deciding eligibility for promotion or is it the total length of service of the next eligible seniormost undergraduate “claimant” that should be reckoned under Rule 45. 3. The revisional authority, the Government, took the view that a qualified graduate teacher will be eligible for promotion if he has got half of the period of service of the seniormost claimant. The said order is under challenge in this writ petition at the instance of the undergraduate teacher.

4. Essential facts may be briefly noticed. The post of Headmaster in A.U.P. School, Vazhikadavu fell vacant on April 1, 2004. Petitioner is an undergraduate with TTC and other test qualifications to his credit. As on the date of arising of vacancy in

the post of Headmaster, he had a total period of 23 years 9 months and 28 days' service to his credit. Respondent No.4 who is admittedly a graduate with B.Ed had 15 years 10 months and 16 days' service in the school as on the date of vacancy.

5. It is beyond controversy that Smt.N.K.Dayabai who was the seniormost undergraduate teacher in the school had put in 32 years 10 months and 17 days service in the school. The next in line, Smt.K.P.Sulaikhabeevi, had 32 years 29 months and 10 days service to her credit while the third seniormost teacher Sri.C.V.Varghese had put in 31 years 10 months and 12 days service. The above named 3 seniormost teachers had relinquished their claim for the post of Headmaster. Thus the petitioner came in line for consideration since he was the next seniormost undergraduate teacher in the school. The Manager appointed the petitioner considering his seniority and eligibility. The said appointment was approved by the Controlling Officer as revealed from Ext.P1, and the claim made by the graduate teacher (respondent No.4) was rejected.

6. The matter was taken up by respondent No.4 before the Government in revision. The Government upheld the claim made by the graduate teacher and passed Ext.P4 order holding that the graduate teacher was entitled to be promoted as Headmaster since he had got half of the period of service of the petitioner who had become the seniormost teacher after the other senior teachers had relinquished their claim for promotion. The above order is under challenge in this writ petition.

7. Rule 45 of Chapter XIV-A KER which deals with promotion

to the post of Headmaster in U.P. school is extracted hereunder:

“45. Subject to rule 44, when the post of Headmaster of complete U.P.school is vacant or when an incomplete U.P. school becomes a complete U.P. school, the post shall be filled up from among the qualified teachers on the staff of the School or Schools under the Educational Agency. If there is a Graduate teacher with B.Ed or other equivalent qualification and who has got at least five years experience in teaching after acquisition of B.Ed Degree, he may be appointed as Headmaster provided he has got a service equal to half of the period of service of the seniormost under graduate teacher. If graduate teachers with the aforesaid qualification and service are not available in the School or Schools under the same Educational Agency, the senior most primary School Teacher with S.S.L.C or equivalent and T.T.C issued by the Board of Public Examination Kerala or T.C.H issued by the Karnataka Secondary Educational Examination Board, Bangalore or a pass in Pre-degree Examination with pedagogy as an elective subject conducted by the University of Kerala or any other equivalent training qualification prescribed for appointment as primary school Assistant may

be appointed.

Note:- The language/specialist teachers, according to their seniority in the combined seniority list of teachers shall also be appointed as Headmaster of U.P. Schools or Schools under an Educational Agency provided the teacher possesses the prescribed qualifications for promotion as Headmaster of U.P. School on the date of occurrence of vacancy.

8. A perusal of the above Rule shows that the post of Headmaster shall be filled up from among the qualified teachers of the staff of the school or schools under the educational agency. The Rule further stipulates that if there is a graduate teacher with B.Ed or other equivalent qualification who has got atleast 5 years' experience in teaching after acquisition of B.Ed degree, he may be appointed as Headmaster provided he has got a service equal to half of the period of service of the seniormost undergraduate teacher. It is further provided in the Rule that the seniormost primary school teacher with requisite qualifications may be appointed if graduate teachers with the aforesaid qualification and service are not available in the school. Thus a graduate teacher with the requisite qualification and 5 years' experience in teaching after acquisition of B.Ed degree, will get the nod for appointment if he has got half of the period of service of the seniormost undergraduate teacher.

9. The provisions contained in the rule undoubtedly show that a graduate teacher with minimum 5 years' experience after acquisition

of B.Ed degree has to necessarily have half of the period of service of the seniormost undergraduate teacher. The Rule does not envisage or contemplate a situation where the words “seniormost undergraduate teacher” have to be read and understood as “the seniormost undergraduate claimant”. The language in the Rule is unambiguous and clear. It has to be read and understood in the plain and simple manner in which it has been incorporated in the Statute. That the Court has no power to add any words to any section in a Statute is well settled (See Union of India v. Deoki Nandan Aggarwal, AIR 1992 SC 96).

10. It is true that a “qualified” graduate teacher with requisite minimum experience will undoubtedly fall in the zone of consideration. But he will get preference over an undergraduate senior teacher only if he has got half of the period of service of the seniormost undergraduate teacher. Seniority is undoubtedly a quality or virtue to be recognised and respected. But seniority alone may not clinch the issue in favour of the senior claimant. Seniority has to give way to higher qualification and experience when it comes to promotion to the higher post which demands added responsibility. It is all the more so, if the promotion is to the post of Head of an institution. Probably it is keeping in view the above perspective that the rule making authority postulated that a senior undergraduate teacher will have to give way to his junior graduate colleague, if the latter has got half of the period of service of the seniormost teacher. When there are more seniors above the junior in the institution, the junior graduate teacher will have to have more than half of the period of service of the seniormost . If only the junior

crosses the said hurdle, he will enter the zone of consideration. Unless and until the junior becomes eligible to hold the post after satisfying the statutory mandates relating to qualification on the touchstone of the clauses contained in Rule 45, he cannot claim promotion.

11. The above discussion leads us to the question whether the words “seniormost undergraduate teacher” in Rule 45 can be read and understood as seniormost undergraduate claimant, if the seniormost teacher relinquishes his/her claim for promotion. In my view, the answer has to be in the negative.

12. It has to be remembered that the seniormost undergraduate teacher does not cease to be the seniormost for the reason that he/she relinquishes the claim for promotion. It is trite that relinquishment of promotion by a senior claimant will relate only to that vacancy which had arisen at that particular point of time. It is also settled that relinquishment will be permanent only as far as that particular vacancy is concerned. Undoubtedly the right of the senior claimant for promotion to the higher post in the next arising vacancy cannot be denied at all. Thus by relinquishment of promotion, the seniormost teacher does not cease to be the seniormost. He/she will continue to occupy the same slot in the seniority list irrespective of relinquishment. Therefore the argument advanced by the learned counsel that the moment the seniormost undergraduate teacher relinquishes promotion, the next person in line will become the seniormost in the school and that the qualification prescribed in Rule 45 relating to the half of the period of service of the seniormost undergraduate teacher will have reference only to the said senior teacher in line, cannot be

countenanced at all.

13. As observed in the preceding paragraphs, the junior graduate teacher necessarily has to have to his credit, half of the period of service of the seniormost undergraduate teacher. It may be true that petitioner became eligible to be considered for promotion because his seniors relinquished their claim. But still, the junior graduate will become eligible for promotion only if he has got half of the period of service of the seniormost undergraduate teacher in the school. His eligibility has to be reckoned with reference to service of the seniormost teacher in the school. Petitioner's position could have been threatened only if he did not have the requisite qualifications.

13. As mentioned earlier, a junior graduate teacher will fall in the zone of consideration only if he has got the requisite qualifications and also only if he satisfies the other statutory conditions. He gets preference to a senior undergraduate teacher only if he satisfies the three clauses of qualification in Rule 45. First of all a graduate teacher has to satisfy that he is qualified to hold the post of Headmaster since he has got the requisite qualifications. The second qualification is that he should have 5 years' teaching experience after acquisition of B.Ed. The third and the last qualification is that he should have to his credit, half of the period of service of the seniormost undergraduate teacher. The words “seniormost undergraduate teacher” mentioned in the Rule do not admit of any ambiguity. Therefore respondent No.4 would have become eligible for promotion only if he had got half of the period of service of Smt.Dayabai who was the seniormost in the school. As noticed already Smt.Dayabai had put in 32 years 10 months and 17

days' service. Respondent No.4 had only 15 years 10 months and 16 days' service to his credit. Therefore he did not satisfy the third clause of qualifications referred to in Rule 45, namely, half of the period of service of the seniormost teacher. In that view of the matter the contentions raised by respondent No.4 cannot be sustained at all.

15. Therefore Ext.P4 order passed by the Government is quashed. Exts.P1 to P3 orders passed by the Assistant Educational Officer are restored.

Writ Petition is allowed.

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**A.K. Basheer
Judge.**